

(2005) 06 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 9714 of 2002

Bishwa Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-06-2005

Acts Referred:

Citation : (2012) 1 PLJR 148

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition the petitioner is aggrieved by the order dated 26.6.2000 passed by the Chief Engineer, Swarn Rekha Multipurpose Project, Jamshedpur whereby and whereunder his second time bound promotion has been cancelled and a direction has been issued for disposal of his claim relating to the retirement benefit accordingly.

2. In short, the relevant facts are that the petitioner was initially appointed in the Work Charge Establishment in which he joined on 28.2.1967. Later on 23.9.1982 he was brought in regular establishment and accordingly he was granted first time bound promotion with effect from 23.9.1982 and second time bound promotion with effect from 28.2.1994 as is evident from the order of the Engineer-in-Chief contained in Annexure-6. However, later on the basis of the Government decision the petitioner moved the authority concerned for reconsideration of his case for grant of first time bound promotion and consequently second time bound promotion by counting the period of his employment in the Work Charge Establishment also upon which his claim has been rejected and in fact his second time bound promotion has been cancelled by the impugned order.

3. It is submitted that pursuant to the said order recovery has also been made from the pensionary dues of the petitioner. Learned counsel for the petitioner has

submitted that the Chief Engineer has completely ignored the Government decision contained in Memo No. 1503 dated 27.3.1987 which provides for counting the period for the purpose of qualifying the service for grant of pension, selection grade and time bound promotion, provided that it does not affect the seniority of regular employee. However, as per the State Government decision the Government servants getting the benefit will not be entitled for any arrear before the date of the Government decision i.e. 27.3.1987. As such according to the learned counsel for the petitioner the respondent authority has arbitrarily acted in denying time bound promotion to the petitioner with effect from 28.2.1992 as was granted earlier.

4. Despite service of notice long back on 14.8.2002 no counter affidavit has been filed. Learned counsel for the State has submitted that despite his best efforts he has not been able to get instruction. However, it appears that a counter affidavit has been filed on behalf of the Executive Engineer, Mechanical Division, Western Singhbhum, presently in Jharkhand State, Respondent No. 5 on 31st August, 2004 i.e. after the creation of Jharkhand State pursuant to Bihar Reorganisation Act, 2000 through the learned counsel appearing for Jharkhand State in which it is stated that the petitioner has availed promotions and benefits during the Work Charge period before his regularisation as Drug Line Operator Class-1 Grade from 1.4.1977 and on this basis his first time bound promotion is effective from 1.4.1987. According to the respondent the petitioner superannuated on 28.2.1995, hence his second time bound promotion is not sustainable. Thus, according to the respondent no. 5 the Chief Engineer has rightly passed the order contained in Annexure-1.

5. None has appeared on behalf of Jharkhand State. Learned counsel for the State of Bihar has not been able to defend the impugned order on the basis of the order of the Engineer-in-Chief, contained in Annexure-6 which gives the details about employment of the petitioner in Work Charge Establishment and making him regular and further granting time bound promotions.

6. Bare perusal of Annexure-6 shows that the petitioner initially joined Work Charge Establishment on 28.2.1967 and became regular on 5.9.1982. It has not been shown on behalf of learned counsel for the State that any promotion/upgradation in the Work Charge Establishment are to be taken into account for the purpose of consideration of the cases for grant of first time bound or second time bound promotions. According to the Government decision, contained in Annexure-5 as already noticed above, the period of service in the Work Charge Establishment is to be counted for the purpose of grant of selection grade and time bound promotions, provided it does not affect the seniority of the regular employees except that a person getting the said benefit will not be entitled for arrear prior to the date of the said notification i.e. 27.3.1987.

7. Mr. Tripathi learned counsel for the Accountant General has also not been able to point out any provision under which promotion/upgradation in the Work Charge Establishment is to be taken into account for the purpose of denial of

time bound promotions as per the Government decision.

8. Under such circumstances, in my opinion, the denial of promotion to the petitioner with effect from 28.2.1992 by the impugned order is wholly arbitrary and not sustainable.

9. The writ application is thus allowed. The impugned order contained in Annexure-1 is quashed. The Respondents are directed to issue necessary order for grant of all consequential benefits including refund of amount, if any already deducted pursuant to Annexure-1 and also fix his pensionary benefits accordingly within one month from the date of the receipt/production of a copy of this order.